1

BURSOR & FISHER, P.A.
L. Timothy Fisher (State Bar No. 191626)

2

Sarah N. Westcot (State Bar No. 264916)
2121 North California Blvd., Suite 1010

3

Walnut Creek, CA 94596
Telephone: (925) 482-1515

4

Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com

5

swestcot@bursor.com

6

BURSOR & FISHER, P.A.
Scott A. Bursor (State Bar No. 276006)

7

369 Lexington Avenue, 10th Floor
New York, NY 10017

8

Telephone: (212) 989-9113
Facsimile: (212) 989-9163

9

E-Mail: scott@bursor.com

10

BRAMSON, PLUTZIK, MAHLER & BIRKHAEUSER, LLP
Alan R. Plutzik (State Bar No. 077785)

11

Michael S. Strimling (State Bar No. 96135)
2125 Oak Grove Road, Suite 120

12

Walnut Creek, CA 94598
Telephone: (925) 945-0200

13

Facsimile: (925) 945-8792
E-Mails: aplutzik@bramsonplutzik.com

14

mstrimling@bramsonplutzik.com

15

Attorneys for Defendants Power
Ventures, Inc. and Steve Vachani

16

17

UNITED STATES DISTRICT COURT

18

NORTHERN DISTRICT OF CALIFORNIA

19

20

FACEBOOK, INC.,

Case No. 5:08-cv-05780 JW

21

Plaintiff,

**DECLARATION OF L. TIMOTHY
FISHER IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
FACEBOOK INC.'S MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS**

22

-against-

23

POWER VENTURES, INC. d/b/a POWER.COM, a
California corporation; POWER VENTURES, INC.

24

a Cayman Island Corporation, STEVE VACHANI,
an individual; DOE 1, d/b/a POWER.COM, an

25

individual and/or business entity of unknown nature;
DOES 2 through 25, inclusive, individuals and/or

26

business entities of unknown nature,

27

Defendants.

Date: October 24, 2011
Time: 9:00 a.m.
Courtroom 15, 18th Floor
Judge James Ware

28

DECLARATION OF L. TIMOTHY FISHER
CASE NO. 5:08-CV-05780 JW

1   I, L. Timothy Fisher, declare as follows:

2   1.   I am a partner at Bursor & Fisher, P.A., counsel of record for Defendants Power

3   Ventures, Inc. and Steve Vachani. I am an attorney at law licensed to practice in the State of

4   California, and I am a member of the bar of this Court. I have personal knowledge of the facts set

5   forth in this declaration and, if called as a witness, I could and would testify competently thereto.

6   2.   Attached hereto as Exhibit A is a true and correct copy of portions of the July 20,

7   2011 deposition of Defendant Steve Vachani.

8   I declare under the penalty of perjury under the laws of the State of California that the

9   foregoing is true and correct, executed on September 6, 2011 at Walnut Creek, California.

10

11

12

13   _____

14   L. Timothy Fisher

15

16

17

18

19

20

21

22

23

24

25

26

27

28

DECLARATION OF L. TIMOTHY FISHER
CASE NO. 5:08-CV-05780 JW   1

EXHIBIT A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FACEBOOK, INC.	:	
Plaintiff,	:	
	:	
v.	:	
POWER VENTURES, INC. d/b/a	:	
POWER.COM, a California	:	
corporation; POWER	:	Case No.
VENTURES, INC. a Cayman	:	5:08-CV-05780
Island Corporation, STEVE	:	JW (HRL)
VACHANI, an individual;	:	
DOE 1, d/b/a POWER.COM, an	:	
individual and/or business	:	
entity of unknown nature;	:	
DOES 2 through 25,	:	
inclusive, individuals	:	
and/or business entities	:	
of unknown nature,	:	
Defendants.	:	

_____

10:04 1   A.   Legally, no. As I mentioned at

10:04 2   the moment, any new activities that I'm pursuing,

10:04 3   I'm pursuing under this entity, so I'm currently

10:04 4   engaged in conversations with -- with people.

10:04 5   Q.   And when did you join Power?

10:04 6   A.   Power was founded in -- It was

10:04 7   2006 is when our -- our primary activities started.

10:04 8   We incorporated Power, I believe it was, if I'm not

10:04 9   mistaken, late 2006 and -- but the activities

10:05 10   started previously as a start-up, we started

10:05 11   working on it.

10:05 12   Q.   Were you one of the creators of

10:05 13   Power?

10:05 14   A.   I was the founder of the company.

10:05 15   Q.   Now, when you say it was

10:05 16   incorporated in 2006 but started before then, was

10:05 17   it started under the Web site title www.power.com?

10:05 18   A.   No. It was originally -- When we

10:05 19   originally started it, there was no Web site. It

10:05 20   was a -- Like many startups we were -- we were

10:05 21   working on a core, you know, product idea, and

10:05 22   later the name power.com came about in 2007. I

10:05 23   believe we acquired the domain in 2007.

10:05 24   Q.   Who helped -- Besides yourself,

10:05 25   who helped create Power.com. You used the --

01:06 1

01:06 2

01:06 3

01:06 4   —   REDACTED   —

01:06 5

01:06 6

01:06 7

01:07 8   Q.   Can you recall what software --

01:07 9   the names of the software programmers associated

01:07 10   with the development process to connect power.com

01:07 11   to Facebook?

01:07 12   A.   Well, of course, Eric was leading

01:07 13   this and it would have been Danilo or Carlos.

01:07 14   Q.   That's Eric Santos?

01:07 15   A.   Yes.

01:07 16   Q.   You think it also may have been --

01:07 17   A.   Well, it would have been Eric.

01:07 18   Eric would be the primary person. He's the -- This

01:07 19   was an important, you know, new site, so we -- he

01:07 20   was -- he was driving all the decisions for that.

01:07 21   Q.   But with -- Is it Danielle, A-L,

01:07 22   or Danielle, _I-E-L-L-E?

01:07 23   A.   Danilo, D-A-N-I-L-O.

01:07 24   Q.   Is that a man?

01:07 25   A.   Yes.

Page 135

```
01:31  1                    MR. BURSOR:  Let him finish.

01:31  2           A.        Yes.

01:31  3           Q.        If -- How many of those employees

01:31  4    were employed in the -- in the -- to the best of

01:31  5    your knowledge as programmers?

01:31  6           A.        Probably about 40.

01:31  7           Q.        So approximately 40 percent of

01:31  8    your employees were programmers?

01:31  9           A.        That's correct.  Programming

01:31 10    related.

01:32 11           Q.        If -- If, in fact, all these

01:32 12    functions were identical, why did you need 40

01:32 13    programmers to consistently develop new programs?

01:32 14           A.        We were -- We were -- we're not --

01:32 15    Our business did not revolve around Facebook.  We

01:32 16    were a very well-funded, venture funded company

01:32 17    building a very -- a very unique and technology

01:32 18    platform programming language and other components

01:32 19    on something that, you know, was -- that was having

01:32 20    and would continue to have a major impact on the

01:32 21    future of the Internet.

01:32 22           Q.        Did you maintain employee records

01:32 23    related to, like, time that was spent by employees

01:32 24    on projects?

01:32 25           A.        No.  I mean, I wouldn't say we
```

01:32 1   have formal records, but we could obviously -- we

01:32 2   know what people were working on.

01:32 3   Q.   And how did you know what people

01:32 4   were working on, just word of mouth?

01:33 5   A.   The managers manage their

01:33 6   employees and they know what -- they know what

01:33 7   people are working on and they assign tasks and

01:33 8   those are E mails. What we did is we searched all

01:33 9   E mails and conversations related to Facebook which

01:33 10   was a very, very, minute part of our overall

01:33 11   business.

01:33 12   Q.   How did you search -- What was

01:33 13   your search methodology for E mails?

01:33 14   A.   I searched -- I took every term

01:33 15   relating to Facebook and PowerScript and

01:33 16   conversations that related to the Power -- the

01:33 17   PowerScript for Facebook. I don't know the exact

01:33 18   terms I searched. I searched all terms. The

01:33 19   second thing I did is I went -- I went to that

01:33 20   period of time and I went through every single. I

01:33 21   scanned down every single E mail to see if I had --

01:33 22   if I had possibly missed any E mails in the search

01:33 23   in the standard search just to see -- to be

01:33 24   thorough. I, then, went to the people that I knew

01:34 25   that were involved with that like Eric and

01:34 1   requested them to -- to provide me any kind of

01:34 2   E mails that were relating to the subject of the

01:34 3   PowerScript for Facebook, and basically in good

01:34 4   faith, I -- I pushed to get everything that was

01:34 5   available and provided those to you. Obviously,

01:34 6   there could be, you know, it could be more stuff

01:34 7   but we made a best -- best -- good faith -- best

01:34 8   faith effort to provide everything.

01:34 9   Q.   When you say you searched for

01:34 10   E mails, did you use keyword searches?

01:34 11   A.   As I said, a combination. First,

01:34 12   I looked at everything in that date period just one

01:34 13   by one manually and scanned down to see if there

01:34 14   were any messages. The second thing I did is I

01:34 15   searched the name of Facebook, PowerScript, and

01:34 16   anything that I thought was related to -- that

01:35 17   would be related to Facebook to find conversations

01:35 18   on the subject on the development. They were --

01:35 19   And then provided those to you.

01:35 20   Q.   When you say you searched E mails,

01:35 21   were you searching your own in box?

01:35 22   A.   I searched my in box and I also

01:35 23   requested, you know, from the individuals that were

01:35 24   involved.

01:35 25   Q.   Okay. How did you employ a

01:35 1   keyword search on your in box?

01:35 2   A.   In Yahoo which is where I -- where

01:35 3   my E mail is they have a search -- a search

01:35 4   functionality where you can search any -- You know,

01:35 5   if you're familiar with the Yahoo mail, I used

01:35 6   their search functionality, and as I said, then I

01:35 7   went to the sent box and the in box of all E mails

01:35 8   around that period and also scanned through those

01:35 9   E mails without individually -- went down the list

01:36 10   of all the E mails that looked like they might be

01:36 11   relevant, so I did a combination of a search and

01:36 12   also a review of E mails in that period.

01:36 13   Q.   What's the period you searched?

01:36 14   A.   I actually searched everything

01:36 15   from -- I did a -- an entire four years first, but

01:36 16   the individual E mails I searched over a -- You

01:36 17   know, I think that whole -- that whole period from

01:36 18   the six-month period until, I guess, January or

01:36 19   February of 2008. Actually, I searched afterwards,

01:36 20   too, but the primary activity relating to Facebook

01:36 21   was in the November, December, January, February of

01:36 22   2007 and 2008, but I did search before and after,

01:37 23   too, to see if there was other stuff.

01:37 24   Q.   The E mails you searched, are they

01:37 25   only the E mails that are on your own -- are on

01:37 1   your own computer?

01:37 2   A.   None of them are on my computer.

01:37 3   They're all on -- Every E mail was on Yahoo. Yahoo

01:37 4   is where I had all my Power E mails, and I accessed

01:37 5   all my E mail in my Yahoo Web mail.

01:37 6   Q.   Did you search backup systems?

01:37 7   A.   There is no backups of my E mails.

01:37 8   All of them -- every -- Every E mail I've sent or

01:37 9   received it comes -- it comes through Yahoo, so

01:37 10   that is my E mail.

01:37 11   Q.   So --

01:37 12   A.   That is -- Every E mail that I've

01:37 13   ever received for Power since I -- I've been using

01:37 14   that Yahoo account before I started Power and

01:37 15   that's been my interface all my E mail.

01:37 16   Q.   What e-mail accounts were

01:37 17   Mr. Santos using to discuss development of the

01:37 18   Facebook PowerScript application with his

01:38 19   programers?

01:38 20   A.   Most likely it would be Eric at

01:38 21   power.com. He does have a personal E mail which on

01:38 22   rare occasion, but it might have come -- it most

01:38 23   likely came from Eric at power.com. There may be

01:38 24   an E mail or two that came from eric@ericsantos.net

01:38 25   which is his personal E mail, but in general,

Page 140

01:38 1   people use their company E mail to send E mails and

01:38 2   in the records, you know, most of them were Eric.

01:38 3   I don't know what was sent, but those are the two

01:38 4   E mails that he would most likely have used.

01:38 5   Q.   Did you search -- First of all,

01:38 6   are those -- is that -- are E mails on that

01:38 7   power.com e-mail address still available on the

01:38 8   servers that are being hosted to this day?

01:38 9   A.   I have -- I would have to verify

01:38 10   that. I -- I haven't looked directly, but I made a

01:38 11   backup of everything that was there.

01:38 12   Q.   When you say you "haven't looked"

01:38 13   does that mean you didn't search to see if there

01:39 14   were E mails on that system?

01:39 15   A.   Didn't need to. I have every

01:39 16   E mail that I ever received or sent was -- I have

01:39 17   access to on my Yahoo account.

01:39 18   Q.   Were you copied on every E mail

01:39 19   that every employee of Power ever --

01:39 20   A.   No. And that's why I also went to

01:39 21   Eric, you know, Eric -- because he was -- he was --

01:39 22   asked him for E mails. Typically, you know, if --

01:39 23   if there was E mails that were secondary he would

01:39 24   have been copied on them.

01:39 25   Q.   But you didn't search the E mails

Page 141

01:39 1   that are stored on --

01:39 2   A.   I trusted Eric to search for

01:39 3   himself. I requested him and then he's pretty

01:39 4   good.

01:39 5   Q.   Did you oversee his search?

01:39 6   A.   I was very explicit in my request.

01:39 7   I don't need to -- to look over his shoulder, you

01:39 8   know. I asked him, you know, to look and he

01:39 9   provided it.

01:39 10   Q.   Mr. Santos is currently residing

01:39 11   in Brazil?

01:39 12   A.   That's correct.

01:39 13   Q.   Do you know if -- Do you know if

01:40 14   Mr. Delgado searched for E mails?

01:40 15   A.   I requested from -- I requested

01:40 16   for Eric to contact anyone that he -- any E mails

01:40 17   that he would have been involved in, so in general,

01:40 18   if -- if any E mail that Eric -- that Mr. Delgado

01:40 19   was writing, he would have copied Eric on it,

01:40 20   because in our protocol of our company, he was his

01:40 21   manager so anything related to the project would

01:40 22   have gone through Eric; so while I didn't -- I

01:40 23   didn't go into every detail because I know that it

01:40 24   was common practice to copy your manager on E mails

01:40 25   on a product or project that you're working on.

```
01:40   1               Q.        Do you know if Mr. Bacelar

01:40   2   searched for E mails?

01:40   3               A.        I would have to ask Eric to --

01:40   4   exactly his specific -- his specific procedure that

01:40   5   he used.  I cannot clarify the micro-details of how

01:40   6   they did that.  What I do know is I -- Eric, based

01:41   7   on the best of my knowledge, would have been copied

01:41   8   on -- on relevant E mails relating to product

01:41   9   decisions since he's -- since he's the -- he's the

01:41  10   core person behind that.

01:41  11               Q.        Do you know how often Power purged

01:41  12   E mails or old E mails while you were -- it was

01:41  13   operating the --

01:41  14               A.        We do not -- We do not purge

01:41  15   E mails.

01:41  16               Q.        Do you know if Power backed up --

01:41  17               A.        We backed it up on our servers but

01:41  18   the backups I have not looked at them personally,

01:41  19   so I cannot say what they -- what they looked like.

01:41  20               Q.        But to the best of your knowledge,

01:41  21   they still exist?

01:41  22               A.        I backed up everything that's on

01:41  23   the servers, so I -- but I don't know -- E mail

01:41  24   servers, you know, I don't know how they were done,

01:41  25   but I do know, as I mentioned, that Eric has access
```

01:41 1   to all his E mails and all E mails that, to the

01:42 2   best of my knowledge, you know, any relevant

01:42 3   E mails relating to Facebook which there were not

01:42 4   that many. As I said, this is a very minor part of

01:42 5   our business. I mean, in terms of technical

01:42 6   resources. Facebook was a very important site so

01:42 7   we obviously -- But since we had already built the

01:42 8   core structure and the core platform, adding

01:42 9   Facebook was not a major change in strategy. It

01:42 10   was just another site to add.

01:42 11   Q.   Are there any documentations that

01:42 12   reflect -- First of all, what precise search terms

01:42 13   did you use in searching your Yahoo e-mail account?

01:42 14   A.   I think I've answered that to the

01:42 15   best of my knowledge already.

01:42 16   Q.   The one I heard was Facebook.

01:42 17   A.   No. I think I said I searched

01:42 18   every E mail that had any discussion of the word

01:42 19   Facebook in it between our employees, and then I

01:42 20   also searched PowerScript, and then PowerScript

01:42 21   with Facebook, and then related terms I can't

01:43 22   remember every -- every micro-term. But as I

01:43 23   mentioned, I also went through that period of time

01:43 24   and looked at E mails.

01:43 25   Q.   When you say "looked at E mails"

Page 144

01:43 1   how long did you take looking at E mails?

01:43 2   A.   I -- I probably spent several

01:43 3   hours. I don't know exactly how much time.

01:43 4   Several hours to go through all the E mails that

01:43 5   were relevant to the combination of the initial

01:43 6   searches and then going through that date period.

01:43 7   I would estimate like a few hours, but I cannot

01:43 8   remember -- I wasn't counting my time.

01:43 9   Q.   When did this happen?

01:43 10   A.   When it was requested. In the

01:43 11 declarations. Around that time period.

01:43 12   Q.   Do you know if you searched, for

01:43 13 instance, the letters F-B?

01:43 14   A.   Did I search the letters F-B?

01:44 15   Q.   Yes.

01:44 16   A.   I believe I did.

01:44 17   Q.   Do you know?

01:44 18   A.   I -- I searched Facebook and I

01:44 19 probably -- I would be happy to do another search

01:44 20 again, but I believe I searched for F-B because

01:44 21 that's a terminology that -- Although, we don't use

01:44 22 that terminology internally, I've searched -- I

01:44 23 searched quite a lot of terms that day. As I

01:44 24 mentioned, I went through every individual --

01:44 25 Irrelevant of the searching, I went through every

Page 145

01:44 1   E mail in that period, so if I had missed something

01:44 2   in a search term, I would have found it in my

01:44 3   manual search by date. I mean, again, it's

01:44 4   possible. Anything's possible, but I did -- I made

01:44 5   my best effort to -- to search and provide

01:44 6   everything.

01:44 7   Q.   In 2008 did -- did Power have

01:44 8   identified officers of the company?

01:45 9   A.   Yes.

01:45 10   Q.   Who were they?

01:45 11   A.   They were Eric Santos, myself, and

01:45 12   Filipe Herrera.

      13   Q.   How do you spell that last name?

01:45 14   A.   H-E-R-R-E-R-A. That's the most

01:45 15   significant individuals.

01:45 16   Q.   What was Mr. Herrera's role?

01:45 17   A.   Corporate development and --

01:45 18   Corporate development.

01:45 19   Q.   Did anybody else have a corporate

01:45 20   title?

01:45 21   A.   There were -- I don't know what --

01:45 22   officer as, you know, there's different levels.

01:45 23   There were people that participate at the board

01:45 24   level and those were -- those are the individuals

01:45 25   that were most involved, but there were many

01:50   1   with the E mail. I don't -- I will double-check on

01:50   2   that, but I don't believe we did, although we -- we

01:50   3   -- would like to have because our users desperately

01:50   4   requested this. I mean, one of the main values of

01:50   5   our services was I want to be able to abrogate all

01:50   6   my contacts in one place, and so it would have been

01:50   7   something we would have willingly and -- done and

01:51   8   had we continued to grow, I think it would be

01:51   9   something we would welcome doing.

01:51 10   Q.   All right. Do you know, again, if

01:51 11   any attempt what -- even if it was unsuccessful,

01:51 12   was ever made to capture that information to users.

01:51 13   A.   I don't know offhand, but I would

01:51 14   be happy to check on that.

01:51 15   Q.   Do you know what documentation

01:51 16   would -- What type of documentation was typically

01:51 17   created by Power that would reflect one way or the

01:51 18   other --

01:51 19   A.   It would have been -- It would

01:51 20   have been in the E mails that we sent because

01:51 21   everything relating to the conversation -- that

01:51 22   would have -- That wasn't even a feature, so it

01:51 23   wouldn't have got beyond a conversation in E mail.

01:51 24   Q.   You say that users wanted that

01:51 25   feature. How do you know users wanted that

Page 152

01:53 1   They did access. They did have full access to

01:53 2   their contacts in Facebook. If you go here, they

01:53 3   had full access. They could -- They could click on

01:53 4   that and write messages so we gave our users

01:53 5   incredible functionality with their Facebook users

01:53 6   with -- with -- to communicate with -- you know, to

01:53 7   see their contacts on Facebook.

01:53 8   Q.   But my question was: Do you

01:53 9   recall one way or the other if there were

01:53 10   complaints --

01:53 11   A.   There were no complaints that I

01:53 12   know of -- that we know of.

01:53 13   Q.   Well, I'm just wondering you said

01:53 14   users desperately wanted that E mail --

01:53 15   A.   I didn't.

01:53 16   MR. BURSOR: Let him finish.

01:53 17   Q.   What I understood, you used the

01:53 18   words "desperately wanted" the function to use --

01:53 19   to show their e-mail addresses, and I just wanted

01:53 20   to know if that -- if you were referring to

01:53 21   complaints that power.com --

01:53 22   A.   Let me -- Let me rephrase that.

01:53 23   The desperately was -- was an opinion based on a

01:53 24   subjective opinion based on the value of our

01:53 25   service. Knowing that our users, you know, one of

01:53 1   our main value propositions was, you know, our core

01:53 2   message was all your -- all your -- everything in

01:54 3   one place that we -- I made that assumption, so I'm

01:54 4   not at liberty to know the opinions of every single

01:54 5   one of our users.

01:54 6   Q.   Did Power have any function that

01:54 7   permitted users to make specific requests for

01:54 8   additional features?

01:54 9   A.   Yeah. We had message boards. We

01:54 10   had chat rooms. We had, you know, basically places

01:54 11   where people could interact in forums and obviously

01:54 12   tell us -- give us comments on feedback.

01:54 13   MR. BURSOR: Take a break.

01:54 14   THE VIDEOGRAPHER: 1:53, off the

01:54 15   record.

01:54 16   (Whereupon, a recess is taken.)

02:00 17   THE VIDEOGRAPHER: 1:59, going on

02:00 18   the record.

02:01 19   Q.   Mr. Vachani, returning to Exhibit

02:01 20   103 -- 102 your declaration --

02:01 21   A.   Sure.

02:01 22   Q.   You referred to the specific

02:01 23   example of the fact that e-mail addresses on

02:01 24   Facebook are imaged as one of the difficulties for

02:01 25   -- one of the ways that Facebook, quote, makes it

02:24 1   -- are very small over all since we had so -- so

02:25 2   few users. I think less than one percent of our

02:25 3   entire user base were Facebook users, so Facebook

02:25 4   was a -- from our perspective, a relatively small

02:25 5   -- It was growing obviously, but at the time we

02:25 6   were on there, it was not a -- it was a small -- a

02:25 7   very small amount, but if you want to get into the

02:25 8   micro-number, I mean, we could make best guess

02:25 9   estimates and try to give you our estimates on

02:25 10   those; and if it was really relevant, I don't know

02:25 11   what else we could do.

02:25 12   Q.   Did you ever log the amount of

02:25 13   Facebook users that were accessing your site?

02:25 14   A.   I believe we provided --

02:25 15   THE WITNESS: Have we provided --

02:25 16   A.   What have we provided? We

02:25 17   provided the information that we were able to

02:25 18   access if I'm not mistaken, but I haven't -- been

02:25 19   awhile since we provided this information, so I

02:25 20   don't know.

02:25 21   Q.   Do you know just offhand if, as a

02:25 22   general practice, Power logged the number of users

02:25 23   of any given Web site at any given time on Power?

02:26 24   A.   Yes.

02:26 25   Q.   So for instance, you knew how many

02:26 1   Orkut registered users were using Power?

02:26 2   A.   Yes.

02:26 3   Q.   So you -- And that was because

02:26 4   that type of information can be logged into your

02:26 5   database.

02:26 6   A.   Yeah. We know all the sites that

02:26 7   our users have registered in the system. That is

02:26 8   correct.

02:26 9   Q.   And you also know what -- the time

02:26 10   they are registered with Power. Correct?

02:26 11   A.   We know when the user registered

02:26 12   with Power and, I guess, we know their -- their --

02:26 13   their log-ins. That's correct.

02:26 14   Q.   And that -- that information

02:26 15   remains or does it? Does that information remain

02:26 16   on the documentation on the servers --

02:26 17   A.   I don't know if it's still

02:26 18   available because those were -- but we have

02:26 19   provided those macro-level numbers on those when

02:26 20   they were requested previously. Obviously, they're

02:26 21   extremely small since Facebook was only up on our

02:26 22   site for a few weeks and before we voluntarily took

02:26 23   it down.

02:26 24   Q.   Do you know how the PowerScript

02:26 25   that was used to access the Facebook site for data

Page 184

02:37 1   you would be invited to ask your friends to join

02:37 2   power.com?

02:37 3   A.   No.   You would have the option to

02:37 4   invite your friends to join just like you have the

02:37 5   option on Facebook to invite your friends to join

02:37 6   Facebook and every other site on the Internet, and

02:37 7   if they did, if they reach a hundred friends that

02:37 8   joined, they would earn $100.

02:37 9   Q.   And if you accepted the feature

02:37 10   that came up saying would you -- it said something

02:37 11   like, "Would you like to invite your friends to

02:37 12   Power"?

02:37 13   A.   Yes.

02:37 14   Q.   If you hit "yes" or "I agree" --

02:37 15   A.   Yes.

02:37 16   Q.   -- how -- what -- what

02:37 17   automation would occur at that point?

02:37 18   A.   So first of all, you have to

02:38 19   remember that 99 percent of our users were not --

02:38 20   were not using -- were not using Facebook. They

02:38 21   were users on other sites, so we actually -- I

02:38 22   guess you could say we were actually a big source

02:38 23   of providing users to Facebook in Brazil. In fact,

02:38 24   as -- I guess you could say it was a gift, but we

02:38 25   -- we brought a large amount of Orkut users to

02:44 1   looked in the database. Correct?

02:44 2   A.   We looked in our database,

02:44 3   correct. And we provided the numbers, I believe,

02:44 4   on that promotion to you guys.

02:45 5   Q.   When somebody clicked on the

02:45 6   launch promotion and they were given, like you to

02:45 7   invite your friend" --

02:45 8   A.   That's correct.

02:45 9   Q.   -- and they hit yes, at that

02:45 10   point the importer, as we've been calling it, would

02:45 11   automatically contact all friends on Facebook to

02:45 12   invite them to --

02:45 13   A.   Let's be clear. We don't have

02:45 14   access to any friends' e-mail addresses, so there

02:45 15   was not a single E mail sent by Face -- by Power

02:45 16   for -- We have e-mail addresses for friends on

02:45 17   other sites, but on -- so we -- If they wanted to

02:45 18   invite, as I said 99 -- well over 90 percent of our

02:45 19   users were Orkut users and Orkut friends and had

02:45 20   friends from other sites where they -- on sites

02:45 21   that allowed their E mails, but Facebook didn't --

02:45 22   didn't allow E mails, otherwise, we would have been

02:45 23   happy to send an invitation to those friends to

02:45 24   invite them; so that was not available for us for

02:46 25   Facebook.

02:53 1   that you could determine how many Facebook

02:53 2   registered users were contacted as part of this

02:53 3   promotion?

02:53 4   A.   Facebook registered users?

02:53 5   Meaning if they were contacted -- In what manner?

02:53 6   If they happened -- If they were contacted at Orkut

02:53 7   and they happened to have an account on Facebook

02:53 8   but were not contacted through -- through the help

02:53 9   of Facebook?

02:53 10   Q.   No. I'm talking about were there

02:53 11   individuals at Facebook contacted on the Facebook

02:53 12   -- through the Facebook system --

02:53 13   A.   Yes.

02:53 14   Q.   -- as a result of this promotion?

02:53 15   A.   Yes. Of course.

02:53 16   Q.   Is there a way to determine how

02:53 17   many were contacted?

02:54 18   A.   Well, we could do -- If you take a

02:54 19   few minutes, we can probably figure out -- It's

02:54 20   obviously very small, but -- Because the Facebook

02:54 21   users were so small, but let's think about -- So

02:54 22   people created events on Facebook, so promoting it,

02:54 23   because our users were -- You know, some of them

02:54 24   created events saying, "Come on Facebook," about

02:54 25   come and joining, they created messages. They

Page 200

02:54 1   sent -- I really don't know, but I mean, what I can

02:54 2   tell you is how many total, you know, users --

02:54 3   Well, if we had -- I'm trying to think about this.

02:54 4   We could probably go through an exercise to try to

02:54 5   figure out the amount. It was not a large amount,

02:54 6   but I'm guessing in the ten -- the amount of people

02:54 7   that might have -- that might have had some

02:54 8   interaction might have been in the tens -- in the

02:54 9   tens -- in the tens of thousands maybe. When I say

02:54 10   "interaction" meaning they might have seen an

02:54 11   event. They might have been contacted over the

02:54 12   phone. They might have been, you know, told them

02:54 13   in person -- I'm just -- I'm extrapolating. I have

02:55 14   no idea. I know that the total amount of users

02:55 15   that signed up for Facebook, so this is the maximum

02:55 16   it could be, I think, were -- I don't remember

02:55 17   this. I think it might have been 30 something. I

02:55 18   don't know the number of how many users actually

02:55 19   were registered who integrated their Facebook

02:55 20   account, so it couldn't be any more than that. I

02:55 21   think it represented less than one percent of our

       22   overall users. I don't know. I don't know that

02:55 23   number.

02:55 24   Q.   What documentation at Power exists

02:55 25   that would tell me that number?

03:34 1   I mean by "click-through"?

03:34 2   A.   We were not actively selling ads

03:34 3   at that time. We were -- You know, we were focused

03:34 4   more on building our platform, so there was very

03:34 5   nominal revenues in the company at that time. In

03:34 6   fact, we probably earned less than 10 -- It would

03:34 7   be very, very, small amounts.

03:34 8   Q.   How were you able to pay your

03:34 9   employees?

03:34 10   A.   We were a venture capital funded

03:34 11   company. Essentially, capital funded.

03:34 12   Q.   In 2009, how much revenue, if you

03:34 13   can estimate, did the company still have?

03:34 14   A.   Probably less than -- 2009

03:34 15   probably -- one to $300,000 of revenue for the

03:34 16   whole year.

03:34 17   Q.   How about 2008?

03:34 18   A.   Probably similar. I don't know

03:34 19   the exact number. It's under -- It would be a few

03:34 20   hundred thousand dollars at the most for the entire

03:34 21   company for the whole year, and probably 99 percent

03:34 22   of that was generated from Orkut, so maybe less

03:35 23   than one percent of that -- I don't know the exact

03:35 24   number, but I would say that if you -- A simple way

03:35 25   we could get this exact number, but if we took,

Page 224

03:35 1   like, 300,000 so maybe 1 to $3,000 of revenue were

03:35 2   generated. Maybe even less than that, related to

03:35 3   Facebook, $1,000, $2,000, and that's probably

03:35 4   overestimating of total revenues that might have

03:35 5   been generated from Facebook because it was such a

03:35 6   small amount. And then the amount earned -- We had

03:35 7   millions of users on the other sites so it would be

03:35 8   -- it would be so minuscule. Probably, I'm

03:35 9   guessing, 1 to $3,000, but I would be happy to run

03:35 10   a calculation and exercise.

03:35 11   MR. BURSOR: Just answer the

03:35 12   questions. Don't volunteer to do work. Okay?

03:35 13   You've done that several times. Just yes,

03:35 14   question, you give an answer. Not I'm happy to do

03:35 15   this or I'm happy to do that. We'll discuss that

03:35 16   separately.

03:35 17   Q.   The Facebook -- In 2008 did you

03:36 18   have demographics as to how many users were

03:36 19   accessing the site from particular countries?

03:36 20   A.   Yes.

03:36 21   Q.   Did you have demographics how many

03:36 22   users were accessing the site through particular

03:36 23   social networks?

03:36 24   A.   Yes.

03:36 25   Q.   Earlier -- And correct me if I'm

Page 225

03:36 1   wrong. -- I understood from one of your answers

03:36 2   you said Brazil and India were your two largest

03:36 3   countries.

03:36 4   A.   That's correct.

03:36 5   Q.   What percentage, if you're able to

03:36 6   estimate, of your users were made up of users in

03:36 7   the United States of one or the other social

03:36 8   networks?

03:36 9   A.   I think it was like around under

03:36 10   five -- under five percent of our total users. I

03:36 11   don't -- We could find that information.

03:36 12   Q.   Where would the information about

03:36 13   the number -- or the demographics of the users

03:36 14   exist still?

03:36 15   A.   Well, we could query our database

03:37 16   and find out -- because we have -- We know our

03:37 17   demographics of our users.

03:37 18   Q.   In 2008, were you making such

03:37 19   queries?

03:37 20   A.   We -- We used Alexa, also. Alexa

03:37 21   was our primary. It was just easier. It was not

03:37 22   such a relevant fact to us because we knew that

03:37 23   over 90 percent or more were coming from India and

03:37 24   Brazil, so I believe Alexa showed under five

03:37 25   percent. That's where I referred to that number

Page 227

03:38   1   Q.   Let me narrow that instead of

03:38   2   using a full year. If you know, do you know

03:38   3   approximately how many users you had -- Power had

03:39   4   in December of 2008?

03:39   5   A.   Talking about registered users or

03:39   6   monthly?

03:39   7   Q.   Registered --

03:39   8   A.   Because --

03:39   9   Q.   Let me restate it. That's a valid

03:39 10   question. In December of 2008 do you have -- as

03:39 11   you sit here today, do you have an approximate

03:39 12   number of registered users of Power that existed

03:39 13   worldwide?

03:39 14   A.   I believe we made a public

03:39 15   announcement. It was around 5 to 6 million that

03:39 16   existed in that time, and I -- Yeah. Yes.

03:39 17   Q.   In December 2008, do you have an

03:39 18   understanding how many of that population were

03:39 19   registered Facebook users?

03:39 20   A.   I believe it was under $30,000 --

03:39 21   30,000 users, but I don't -- would have -- I would

03:39 22   have to double confirm that.

03:39 23   Q.   Does that information exist, as I

03:39 24   understand it, in the data -- The database can be

03:39 25   queried for that information?

03:39 1   A.   I believe that information was

03:39 2 provided in previous requests. Something of that

03:40 3 nature. I'm not a hundred-percent sure, but I

03:40 4 guess we could try to run it, a database query.

03:40 5   Q.   Regardless of whether it was

03:40 6 provided previously, a database query would obtain

03:40 7 that information. Correct?

03:40 8   A.   Yes.

03:40 9   Q.   Would a same sort of query

03:40 10 identify the total number of Facebook users that

03:40 11 ever used -- registered --

03:40 12   MR. COOPER: Strike that.

03:40 13   Q.   Would the same sort of database

03:40 14 query identify the number of registered Power users

03:40 15 that were also Facebook members over time?

03:40 16   A.   "Over time," what do you mean by

03:40 17 that.

03:40 18   Q.   However long Facebook was made

03:40 19 accessible to Power users?

03:40 20   A.   Facebook was made accessible for

03:40 21 approximately -- You know, the dates, but

03:40 22 approximately one month more or less -- a little

03:40 23 more than a month, like five weeks, and then,

03:40 24 again, we launched with Facebook Connect working

03:40 25 with -- we launched with Facebook Connect for a few

03:40 1   days, and then -- before Facebook took it down. So

03:41 2   I don't -- I don't know the -- the answer to that,

03:41 3   but I think it was -- I think it was around 30 --

03:41 4   the number that rings my -- that my memory, is

03:41 5   around 30,000 users that registered their Facebook

03:41 6   accounts.

03:41 7   Q.   In December 2008, were you aware

03:41 8   of what was the largest social network in the

03:41 9   world?

03:41 10   A.   I believe it was -- it was either

03:41 11   Myspace or Facebook or -- Yeah. Myspace or

03:41 12   Facebook.

03:41 13   Q.   Was it important -- Did, at any

03:41 14   time, you recall discussions internal at Power that

03:41 15   Power's management deemed it important to be able

03:41 16   to aggregate Facebook on its site because it was

03:41 17   one of the two largest social networks in the

03:41 18   world?

03:41 19   A.   It was extremely important for us

03:41 20   for our future.

03:41 21   Q.   When did those discussions begin?

03:42 22   A.   Those discussions began right

03:42 23   around the time -- In that six-month period,

03:42 24   basically we made the decision that adding Facebook

03:42 25   would be something that we wanted to do, and so it

03:42 1   was the same time period I've given you earlier.

03:42 2   Q.   And this was six-month period

03:42 3   over -- before Facebook actually was launched on

03:42 4   power.com?

03:42 5   A.   There may have been verbal -- As I

03:42 6   said, most of the activity took place in the -- in

03:42 7   the three months -- at the end of 2007. The last

03:42 8   three months of the year that's when all the

03:42 9   activity and conversations focused on Facebook. I

03:42 10   believe the launch date was -- was November 30th or

03:42 11   December 1st that we turned Facebook on, so it

03:42 12   would have been the two to three months before that

03:42 13   where the most conversations took place.

03:42 14   Q.   In December 2007, do you know what

03:42 15   the largest social network in the world was?

03:43 16   A.   That would be Facebook or Myspace.

03:43 17   Q.   And was Power operating publicly

03:43 18   not as a public company but the Web site for Power

03:43 19   operating on the Web in December of 2007?

03:43 20   A.   Yes.

03:43 21   Q.   Were the -- Were there discussions

03:43 22   internal at Power as early as December of 2007 of

03:43 23   including Facebook on -- as a Web site that would

03:43 24   be included in your social aggregation?

03:43 25   A.   What point?

Page 245

04:01 1 answers that you had approximately 100 employees,

04:01 2 power.com did?

04:01 3   A.   On December 1st, 2008?

04:01 4   Q.   Yes.

04:01 5   A.   Approximately, yes.

04:01 6   Q.   Besides yourself, were any of

04:01 7 those employees involved in discussions with

04:01 8 Facebook about integration of Facebook Web site?

04:01 9   A.   At what point?

04:01 10   Q.   In December 2008?

04:01 11   A.   Yes. There were -- I was leading

04:01 12 the discussions. I led all those discussions with

04:01 13 Facebook. There were quite extensive discussions

04:01 14 going -- going on about integration, creating the

04:02 15 schedule. We actually, as a courtesy, had -- had

04:02 16 offered to try -- to try working with Facebook

04:02 17 Connect as least as a first measure, although it

04:02 18 was not necessary, so there was a conversation

04:02 19 going on.

04:02 20   Q.   Who were the other employees who

04:02 21 were involved in the discussions?

04:02 22   A.   Eric Santos was the primary

04:02 23 person. I don't remember who else. There were

04:02 24 other people that were in the conversations.

04:02 25   Q.   Were any of your investors

Page 294

05:05 1   agenda for these weekly meetings?

05:05 2   A.   There would typically be some kind

05:05 3   of agenda.

05:05 4   Q.   Would that be a written document

05:05 5   circulated amongst management?

05:05 6   A.   Yes. At that time, yeah.

05:06 7   Q.   Do you know if those agendas still

05:06 8   exist?

05:06 9   A.   I don't know if they still exist,

05:06 10 but I do -- I can tell you that Facebook Connect

05:06 11 was not -- it was definitely not at a high level --

05:06 12 It's something we reviewed. It definitely wouldn't

05:06 13 have been on an agenda item. It might have come up

05:06 14 in a discussion.

05:06 15   Q.   Earlier you said you had discussed

05:06 16 Facebook Connect extensively --

05:06 17   A.   We discussed it technically, like,

05:06 18 technical discussions about it. Not about -- It

05:06 19 wouldn't have been a major issue in these meetings.

05:06 20 I would have basically said to Eric, "I need you to

05:06 21 go play around," probably off line. "Eric, I need

05:06 22 you to go -- you and your team to evaluate Facebook

05:06 23 Connect, what it's capable and if it's possible to

05:06 24 -- what we can and can't do with it."

05:06 25   Q.   Did you search for these agendas

05:06 1   when you produced documents in this case?

05:06 2   A.   They're not electronic. This

05:06 3   would typically be somebody put it on a word thing

05:06 4   and then distributed an electronic copy and it was

05:06 5   a very informal agenda, if there was even a agenda.

05:07 6   It was no formal process for that.

05:07 7   Q.   When you searched earlier, did you

05:07 8   search with key words for text documents that were

05:07 9   attached to any E mails?

05:07 10   A.   Those are included in -- Those get

05:07 11   included. When you do a search on Yahoo, it

05:07 12   searches text documents.

05:07 13   Q.   Did you search for on the -- the

05:07 14   -- whether or not there were simply store copies of

05:07 15   these agendas that were not attached to E mails?

05:07 16   A.   They would have come up in the

05:07 17   message -- All agendas? Most agendas I would say

05:07 18   are typically -- If they were relevant, they would

05:07 19   be sent out in E mails, so when I searched the

05:07 20   E mails with anything related to Facebook they

05:07 21   could have come up -- they would have come up in

05:07 22   the E mail searches for the most part.

05:07 23   Q.   How did you find the documents

05:07 24   related to PowerScript?

05:07 25   A.   I searched for things that were

Page 296

05:07 1   with PowerScript or I searched with the word

05:08 2   "Facebook." Specifically, relating to this issue

05:08 3   as I told you earlier, I went through -- Actually,

05:08 4   I went through all the E mail also of that time

05:08 5   period, and I also searched the word "Facebook." I

05:08 6   also searched the word "PowerScript" and I also

05:08 7   searched a range of other terms that I thought were

05:08 8   related to this issue.

05:08 9   Q.   You indicated nobody -- that it

05:08 10   was not the policy to destroy documents at -- at

05:08 11   Power.

05:08 12   A.   That's correct.

05:08 13   Q.   Where were those documents stored?

05:08 14   A.   Any document that was sent

05:08 15   electronically is still in my E mailbox.

05:08 16   Q.   What if it wasn't sent

05:08 17   electronically?

05:08 18   A.   If it wasn't sent electronically,

05:08 19   -- There's -- I don't know which -- They're -- For

05:08 20   the most part, I would say most of our

05:08 21   communications were sent electronically, but if

05:08 22   somebody prepared, for example, a -- a Word

05:08 23   document and never sent it out to anyone, which I

05:08 24   don't think happened very often, and then there

05:08 25   would be no way to locate that.

05:08   1   Q.   Where were employee records stored

05:08   2   at Power when they were in their own personal

05:09   3   possession?

05:09   4   A.   If they were in their own personal

05:09   5   possession, they would be on the laptop, but if

05:09   6   they were shared documents they would be on our --

05:09   7   on our servers.

05:09   8   Q.   If -- Did you use word "system" at

05:09   9   Power?

05:09 10   A.   We used a -- We had a -- We had a

05:09 11   -- We had a shared server for documents that were

05:09 12   appropriate that were in -- in intercompany

05:09 13   discussions.

05:09 14   Q.   Did you search this -- Is this

05:09 15   word "system" still stored anywhere --

05:09 16   A.   I personally, whenever somebody

05:09 17   wanted me to review something, I would get it in my

05:09 18   E mailbox because I just preferred that, so I would

05:09 19   always request that to be sent to my E mail. So

05:09 20   if, there was anything related to Facebook or these

05:09 21   other issues, it would have been in my E mailbox.

05:09 22   Also, because that was my personal practice and

05:09 23   preference if people if they had a document -- I

05:09 24   personally never -- never used that -- the shared

05:09 25   stuff -- shared -- put it on the servers very often

Page 298

05:09   1   and many people -- E mail was the preferred form of

05:10   2   communication in the company.

05:10   3   Q.   And did you -- Again, did you

05:10   4   search any of the word "system" documents to see if

05:10   5   there were any materials --

05:10   6   A.   Every document that I've ever

05:10   7   reviewed that I can -- To the best of my knowledge,

05:10   8   was usually E mailed to me, you know. That was --

05:10   9   because I was not always -- I was moving -- I was

05:10 10   moving between traveling a lot, and in general, the

05:10 11   -- People would E mail it to me, so it would be my

05:10 12   E mailbox and I've searched that entire E mail box.

05:10 13   Q.   How far back does your E mail box

05:10 14   go back?

05:10 15   A.   It goes back to well before Power

05:10 16   was started.

05:10 17   Q.   Was any type of request sent out

05:10 18   to all employees of Power that they maintain

05:10 19   records of everything related to the development of

05:10 20   the Facebook integration?

05:10 21   A.   No.

05:10 22   Q.   So none of the employees were any

05:10 23   inform instructed to maintain their records?

05:11 24   A.   No. They were not.

05:11 25   Q.   So -- what was -- For how much